

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CA 08-103

DOUGLAS PILANT and BRENDA
PILANT

APPELLANTS

V.

LAKELAND DEVELOPMENT, LLC
APPELLEE

Opinion Delivered SEPTEMBER 24, 2008

APPEAL FROM THE CLEBURNE
COUNTY CIRCUIT COURT,
[NO. CIV-06-127-4]

HONORABLE TIM WEAVER, JUDGE

AFFIRMED

JOHN B. ROBBINS, Judge

Appellee Lakeland Development, LLC, is engaged in the development of lots and boat docks on Greers Ferry Lake. In November 2003, Lakeland Development sold two lakefront lots and two boat slips to appellants Douglas Pilant and Brenda Pilant. In 2006, Lakeland Development filed a complaint against the Pilants for breach of contract, seeking damages and requesting that the Pilants be enjoined from selling boat slips on their recently constructed boat dock. The complaint was later amended to seek injunctive relief only, including the removal of the Pilants' dock.

After a trial was held, the trial court ordered removal of the Pilants' boat dock on the basis that the Pilants had breached their contract with Lakeland Development.¹ The Pilants

¹The trial court also ordered Lakeland Development to provide two boat slips to the Pilants, pursuant to the parties' prior agreement, upon the Pilants producing valid boat registrations. No appeal has been taken from that ruling.

subsequently filed a motion for reconsideration or new trial, which was deemed denied by the trial court. The Pilants now appeal to this court, arguing for reversal of the trial court's injunction to remove their dock because (1) the trial court erred in finding a breach of contract; and (2) even if there was a breach, the trial court erred in finding that it caused harm to the appellee. We affirm.

In November 2003, the parties executed a "Escrow contract to Purchase," whereby the appellants agreed to pay \$125,000 for two lots known as "Lot 5" and "Lot 6." The escrow contract further provided for the sale of "two boat slips in the Buckhead Community Boat Dock nearest to the subject property." As part of the transaction and prior to closing, Lakeland Development presented two affidavits for signature by the Pilants. Both Douglas Pilant and Brenda Pilant signed one of the affidavits, which provided in relevant part:

1. That on even date herewith, we have purchased from Lakeland Development, LLC 2 boat slips in the Community Boat Dock.
2. That the undersigned is aware that Lakeland Development, LLC, plans to add additional boat slips to the Community Boat Dock and does hereby specifically agree that Lakeland Development, LLC may add all boat slips as approved by the Corps of Engineers, and undersigned further states and agrees that undersigned will not object to, pursue or support, in any way whatsoever, any action that may interfere, delay, prohibit or otherwise adversely affect Lakeland's installation of additional boat slips onto the Community Boat Dock.

....

4. That the undersigned affiants make this sworn statement for the purpose of inducing Lakeland Development, LLC to convey the said boat slips to the undersigned for the consideration agreed upon by and between the parties, and the undersigned acknowledges that in the absence of this Affidavit that Lakeland Development, LLC would not convey said boat slips to the undersigned.

However, on the other affidavit provided to the Pilants by Lakeland Development, the Pilants struck the following language:

That in partial consideration of the conveyance of said boat slips by Lakeland Development, LLC, to the undersigned, the undersigned represents, covenants and agrees with Lakeland Development, LLC that neither the undersigned, nor the undersigned's heirs, executors, administrators [sic] or assigns shall apply for a boat dock permit for the subject property nor shall grant, sell or convey an easement to any third party over any part of the subject property for the purpose of said third party having access to Greers Ferry Lake and/or any boat dock thereon.

The Pilants replaced that language with the handwritten provision, "owners have the right to apply for their own private dock on their property," and the Pilants signed the affidavit.

Initially, Lakeland Development indicated that it would not close the transaction with the altered affidavit. The Pilants countered that they would not close without Lakeland Development accepting the altered affidavit. Lakeland subsequently elected to close the transaction with the affidavit remaining in its altered condition. Lakeland Development executed a "bill of sale" describing "two boat slips in the Buckhead Community Boat Dock nearest to the said real properties, with the specific slip numbers to be assigned when the same has been determined."

After completion of the sale, Lakeland Development continued to own Lots 7 and 8, which are also on the lakefront and are adjacent to the Pilants' property to the north. Sometime in 2006, the Pilants applied to the Army Corps of Engineers for a boat dock permit, which the Corps granted. The actual location of the dock installed by the Pilants was on neither of the parties' property. This is because the Corps owns all of the shoreline of the lake. However, if an imaginary line were drawn extending from the border between the

Pilants' Lot 6 to the south and Lakeland Development's Lot 7 to the north, the dock would be positioned about 94 feet north of the line.

Lakeland Development's owner, Mike Elrod, testified that the Corps controls the location of boat docks on the lake, and that only 22 of the 276 miles of shoreline are zoned for boat docks. According to Mr. Elrod, to apply for a boat dock a person must have legal lake access within 200 feet of where the dock is to be located. Mr. Elrod testified that in selling lots, it helps tremendously if buyers can also purchase a boat slip, which sell for between \$20,000 and \$35,000.

Mr. Elrod indicated that there are currently three Buckhead Community Boat Docks. He stated that the dock nearest the Pilants' property is about 700 or 800 feet away. According to Mr. Elrod, at the time that the sale was transacted it was important to him to be able to build a dock capable of holding twenty boat slips in the present location of the Pilants' dock, which was made impossible by the Pilants' actions. Mr. Elrod testified:

I agree that paragraph 2 of [the unaltered affidavit] says that the Pilants would not take any action that would interfere, delay, prohibit or otherwise adversely affect Lakeland's installation of additional boat slips onto the Community Boat Dock. That refers to the Community Boat Dock we were going to build where the Pilants live. I don't agree that the document refers to the existing docks. It refers to the one we were going to build. It was not in existence in November, 2003. I don't agree that the one I sold them was the one nearest to their lots, 700 or 800 feet away.

Mr. Elrod maintained that he would not have completed the transaction if he thought the contract would permit the Pilants to build a boat dock in front of Lot 7.

Mr. Elrod acknowledged that the altered affidavit authorized the Pilants to apply for a dock to be built adjacent to their property, but indicated that this caused little concern

because that part of the shoreline was not zoned for boat docks. As to why Lakeland Development had not yet applied for a dock in the area of where the Pilants' dock was built, Mr. Elrod explained that the Pilants had yet to provide boat registrations. Mr. Elrod stated that without valid registrations, the Corps would not approve a dock or the construction of boat slips. Mr. Elrod indicated that had the Pilants produced the registrations, he would have built a dock there and provided them with the first two slips. Mr. Elrod did not agree that adding additional boat slips necessarily means adding onto a dock already in existence.

Mr. Pilant testified on behalf of the appellants. He agreed that his placement of the dock across from Lot 7 prevented Lakeland Development from placing a dock there.

Mr. Pilant further testified:

I have not contacted Mr. Elrod to say here are our boat registration slips, we want you to build us two boat slips, because he already sold me two that were currently available in the boat dock that was there. They were available in the Buckhead Community Dock. And, I had the right, if he ever built one closer to my property, to move the two that he was selling me to another dock that was closer to my property. It was anticipated at the time of the transaction that Mr. Elrod was going to build the boat dock and I was going to transfer to it if that ever happened. That's why the wording was in there.

Mr. Pilant testified that he thought the unaltered affidavit only prevented his interference with the installation of additional slips at the existing Buckhead Community Boat Dock.

On appeal, the Pilants argue that the trial court erred in finding that they breached their contract with Lakeland Development. Appellants correctly assert that a contract is to be considered as a whole, and if the agreement of the parties is embraced in two or more instruments, both or all of the instruments must be considered together. *See Integon Life Ins. Corp. v. Vandergrift*, 11 Ark. App. 270, 669 S.W.2d 482 (1984). The Pilants contend that

there can be no breach in connection with their altered affidavit because, while it reserves their right to apply for a boat dock on their property, it makes no restrictions as to their right to apply for a boat dock on other property not owned by them. They further submit that they complied with the terms of the unaltered affidavit because their boat dock does not interfere with any existing dock. Considering the contract as a whole, the Pilants submit that their conduct of applying for and constructing the dock did not contradict any of the terms of the contract and thus there was no breach of the agreement between the parties.

Alternatively, the appellants argue that even if there was a breach, there was no harm caused to Lakeland Development to justify the issuance of an injunction to remove their dock. The Pilants note the testimony of Mr. Elrod, where he acknowledged that many more slips could be added to the existing Buckhead Community Boat Docks. The Pilants assert that they did not interfere with the addition of new slips in those locations pursuant to their promise in the unaltered affidavit. The appellants argue that the construction of their dock had no effect on Lakeland Development's plans, and that the trial court clearly erred in ordering their dock removed.

The first rule of interpretation of a contract is to give the language employed the meaning that the parties intended. *First Nat'l Bank v. Griffin*, 310 Ark. 164, 832 S.W.2d 816 (1992). It is also a well-settled rule in construing a contract that the intention of the parties is to be gathered, not from particular words or phrases, but from the whole context of the agreement. *Id.* We must look to the contract as a whole and the circumstances surrounding its execution to determine the intention of the parties. *Id.*

In bench trials, the standard of review on appeal is whether the trial court's findings were clearly erroneous. *Cisco v. King*, 90 Ark. App. 307, 205 S.W.3d 808 (2005). A finding is clearly erroneous when, although there is evidence to support it, the reviewing court, when reviewing all the evidence, is left with a definite and firm conviction that a mistake has been committed. *Id.* In the present matter, we hold that the trial court did not clearly err in its interpretation of the parties' contract or in its finding that the Pilants' actions constituted a breach of the contract.

We agree with the appellants that there was no breach of contract in relation to the altered affidavit. That is because, while that affidavit reserves the Pilants' right to apply for a dock on their property, it does not contain any prohibition against application for a dock on other property. Therefore, the controlling issue is whether the Pilants breached the language of the unaltered affidavit wherein they swore not to interfere with Lakeland Development's installation of additional boat slips onto the Community Boat Dock. That affidavit also refers to the Community Boat Dock as "Buckhead Community Boat Docks."

Mr. Elrod indicated in his testimony that the Community Boat Dock referenced in the affidavit was the dock that Lakeland Development planned to build across from Lot 7 where the Pilants built their dock. Even Mr. Pilant admitted that when the sales transaction was made, it was anticipated that Lakeland Development would build a dock there and that two of the slips would be provided to the Pilants. Mr. Elrod explained that Lakeland Development was awaiting registrations from the Pilants before it could apply for a permit to build the dock. As the appellee asserts in its brief, to construe the affidavit in the manner

urged by the Pilants would render the provisions meaningless because the nearest existing dock is 700 or 800 feet from the Pilants' property, and the Pilants could not possibly interfere with the installation of additional slips on those docks. That is because to even apply for a boat dock a person must have access within 200 feet of the proposed location. Under these circumstances, the appellee posits that the only logical interpretation of the language is that the Pilants could not interfere with the anticipated boat dock (and attendant slips) to be placed within 200 feet of their property, which is encompassed under the definition of "Community Boat Dock." Given the evidence presented, we agree with the appellee that the trial court did not clearly err in finding a breach of contract because, by building their dock in its present location, the Pilants interfered with the installation of additional slips onto the Community Boat Dock.

Moreover, we reject the Pilants' alternative argument that there was no harm caused to Lakeland Development. We note that in neither their motion for reconsideration filed below, nor in this appeal, has there been any contention that there was an adequate remedy at law such to defeat the issuance of an injunction. Appellant's argument below and on appeal is limited to its claim that there was no proof that their actions caused any harm. However, contrary to appellants' argument, there was testimony that Lakeland Development intended to profit from the sale of boat slips at the same location where the Pilants built their dock. In fact, Mr. Elrod specifically identified a buyer who had contracted to buy some slips in that area, and Mr. Elrod stated that Lakeland Development could not provide the slips

until the Pilants' boat dock was removed. We hold that the appellees offered sufficient proof of financial harm to justify the removal of the offending dock as ordered by the trial court.

Affirmed.

GLADWIN and BIRD, JJ., agree.